



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
Genevieve S. Wallace

**OCT 28 2013**

Colorado Springs, CO 80906

RE: MUR 6621  
American Hotel & Lodging Association  
American Hotel & Lodging Association  
Political Action Committee and Joori Jeon  
in her official capacity as treasurer  
Joseph A. McInerney  
The Broadmoor Hotel, Inc.

Dear Ms. Wallace:

This is in reference to the complaint you filed with the Federal Election Commission on August 2, 2012. The Commission found that there was reason to believe the American Hotel & Lodging Association ("AHLA") and American Hotel & Lodging Association Political Action Committee and Joori Jeon in her official capacity as its treasurer ("HotelPAC") violated 2 U.S.C. §§ 441b(b)(3)(B), (C) and 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(a) and (g) with respect to HotelPAC's 2011 fundraiser. On October 22, 2013, the Commission accepted the Conciliation Agreement signed by those respondents.

The Commission also dismissed the allegation that AHLA and HotelPAC violated 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1) with respect to HotelPAC's 2012 fundraiser. Furthermore, there were insufficient votes to make any findings concerning the allegations that AHLA and HotelPAC violated 2 U.S.C. §§ 441b(b)(3)(B), (C) and 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(a) and (g) with respect to HotelPAC's 2010 fundraiser and the solicitations contained in *Lodging Magazine* and AHLA's website. A Statement of Reasons explaining the basis for the Commission's disposition of those issues will follow.

With respect to the other respondents in this matter, the Commission dismissed with caution the allegation that the Broadmoor Hotel, Inc. (the "Broadmoor Hotel") violated 2 U.S.C. §§ 441b(b)(3)(B), (C) and 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(a) and (g); and dismissed the matter as to Joseph A. McInerney. The Commission closed the entire file in this matter on October 22, 2013.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files,

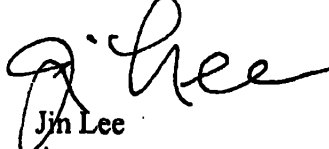
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MUR 6621 (American Hotel & Lodging Association et al.)  
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68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). Copies of the Conciliation Agreement and the Factual and Legal Analysis for the Broadmoor Hotel are enclosed for your information.

If you have any questions, please contact me at (202) 694-1530.

Sincerely,

  
Jin Lee  
Attorney

Enclosures  
Conciliation Agreement  
Factual and Legal Analysis

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

4 ) MUR 6621

5 American Hotel & Lodging Association )

6 American Hotel & Lodging Association Political )

7 Action Committee and Joori Jeon in her official )

8 capacity as treasurer )

9  
10 **CONCILIATION AGREEMENT**

11  
12 This matter was generated by a complaint filed with the Federal Election Commission

13 ("Commission"). See 2 U.S.C. § 437g(a)(1). The Commission found reason to believe that

14 American Hotel & Lodging Association, American Hotel & Lodging Association Political

15 Action Committee and Joori Jeon, in her official capacity as treasurer, (collectively

16 "Respondents") violated 2 U.S.C. §§ 441b(b)(3)(B), (C) and 441b(b)(4)(A)(i) and 11 C.F.R.

17 § 114.5(a)(3), (4) and (g)(1).

18 NOW, THEREFORE, the Commission and the Respondents, having participated in  
19 informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree  
20 as follows:

21 I. The Commission has jurisdiction over the Respondents and the subject matter of this  
22 proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
23 § 437g(a)(4)(A)(i).

24 II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken  
25 in this matter.

26 III. Respondents enter voluntarily into this agreement with the Commission.

27 IV. The pertinent facts in this matter are as follows:

28 1. The American Hotel & Lodging Association ("AHLA") is an incorporated trade  
29 association that represents the lodging industry.

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15. AHLA provided the Broadmoor with a notice to distribute to Club members, inviting them to join AHLA for one year for a discounted fee of \$25.

16. On August 13, 2011, the Broadmoor emailed the notice to Golf Club members inviting them to become members of AHLA and, on the same day, separately sent Golf Club members an invitation to the fundraiser, which solicited contributions for HotelPAC. The Broadmoor sent the fundraiser invitation to all Golf Club members, regardless of whether the members had joined AHLA.

17. None of the solicitations sent to Golf Club members for the August 2011 fundraiser informed Golf Club members of the political purpose of HotelPAC or their right to refuse to contribute without fear of reprisal.

18. Fourteen Golf Club members became AHLA members, and ten of those persons attended the event and made contributions totaling \$9,515.00 to HotelPAC.

V. Respondents committed the following violations:

1. Contributions were solicited to HotelPAC from persons who were not in the restricted class of AHLA or the Broadmoor in violation of 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).
2. Golf Club members were not informed of the political purpose of HotelPAC and their right to refuse to contribute without reprisal in violation of 2 U.S.C. § 441b(b)(3)(B), (C) and 11 C.F.R. § 114.5(a)(3), (4).

VI. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of nine-thousand dollars (\$9,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).
2. Respondents will cease and desist from violating 2 U.S.C. §§ 441b(b)(3)(B), (C) and 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(a)(3), (4) and (g)(1).

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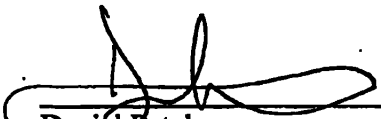
VII. The Commission, on request of anyone filing a complaint under 2 U.S.C § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Except as otherwise provided, Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

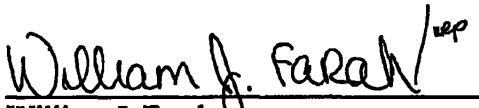
X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

  
Daniel Petalas  
Associate General Counsel  
For Enforcement

10/24/13  
Date

FOR THE RESPONDENTS:

  
William J. Farah  
Counsel To  
American Hotel & Lodging Association  
American Hotel & Lodging Association  
Political Action Committee

8/26/13  
Date

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** The Broadmoor Hotel, Inc.

**MUR 6621**

**I. INTRODUCTION**

This matter involves allegations that the American Hotel & Lodging Association Political Action Committee ("HotelPAC" or the "Committee"), which is the separate segregated fund of the American Hotel and Lodging Association ("AHLA"), improperly solicited individuals outside of AHLA's or its members' restricted class and failed to inform contributors about its political purpose in violation of the Federal Election Campaign Act, as amended (the "Act").

Complainant is a member of the Broadmoor Golf Club ("Golf Club" or "Club"), which is a wholly owned operation of The Broadmoor Hotel, Inc. (the "Broadmoor"), a corporate member of AHLA. The Complainant asserts that she and other Golf Club members were illegally solicited to make contributions to the Committee when she and other Golf Club members were invited to HotelPAC fundraisers in 2010 and 2011.

As discussed below, the Commission dismisses with caution the allegations that: (1) the Broadmoor violated 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1) by soliciting contributions outside of the restricted class; and (2) the Broadmoor violated 2 U.S.C. § 441b(b)(3)(B) and (C) and 11 C.F.R. § 114.5(a)(3) and (4) by failing to inform individuals of the political purpose of HotelPAC or the right to refuse to contribute without any reprisal.

**II. FACTUAL BACKGROUND**

AHLA is an incorporated trade association that represents the lodging industry. *See* <http://www.ahla.com/content.aspx?id=3438>. HotelPAC, a committee registered with the Commission, is the separate segregated fund ("SSF") of AHLA. *See* AHLA Statement of

1 Organization (Sept. 20, 2012). The Broadmoor is a hotel located in Colorado Springs, Colorado.  
2 Broadmoor Resp. at 1 (Nov. 19, 2012). The Golf Club is a private country club with dues paying  
3 members and is located on the same property as the Broadmoor. *Id.* The Broadmoor and the  
4 Golf Club are not separate legal entities; the Broadmoor operates the Club as a department of the  
5 hotel. Broadmoor Supp. Resp. at 1 (Dec. 12, 2012). The Broadmoor is a corporate member of  
6 AHLA. Broadmoor Resp. at 2.

7 For over ten years, the Broadmoor has hosted an annual fundraiser for HotelPAC.  
8 Broadmoor Resp. at 2. The Broadmoor worked closely with AHLA and AHLA's state partner to  
9 plan the fundraisers, which consisted of a reception, dinner, and an auction. *Id.* According to the  
10 Broadmoor, the branding of the events — that is, the trade logos and names displayed on  
11 marketing materials at the events — featured only HotelPAC, not the hotel,<sup>1</sup> and HotelPAC was  
12 the exclusive beneficiary; AHLA managed the event, while the Broadmoor provided its facilities,  
13 food, and service. *Id.* (citing Decl. of Cindy Johnson ¶¶ 4, 7-8 (Oct. 25, 2012)). Attendees made  
14 all payments and contributions directly to HotelPAC; the Broadmoor neither collected nor  
15 bundled checks nor received payments or contributions. *Id.*

16 **A. HotelPAC Fundraisers**

17 **1. 2010 Fundraiser**

18 In 2010, the Broadmoor staff sought to increase attendance at the fundraiser. They  
19 consulted with AHLA leadership, including its president and counsel, to determine whether Golf  
20 Club members could be invited. Broadmoor Resp. at 2 (citing Johnson Decl. at ¶¶ 10-12; Decl.  
21 of Michael Pastor-Clark ¶¶ 6-8 (Nov. 15, 2012)). According to the Broadmoor, AHLA

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<sup>1</sup> We note, however, that the Broadmoor's logo appears in solicitation materials submitted with the Complaint and Broadmoor's Response. *See, e.g.*, Compl., Ex. 1, 4; Broadmoor Resp., Ex. 5-8, 10.

1 concluded that the Broadmoor could invite Golf Club members so long as they agreed to become  
2 members of AHLA. Broadmoor Resp. at 3 (citing Johnson Decl. ¶ 13; Pastor Clark Decl. ¶ 8;  
3 Decl. of Maureen Carter ¶ 8 (Nov. 15, 2012)). On August 13, 2010, the Broadmoor invited Golf  
4 Club members to attend the fundraiser. Compl., Ex. 1; Broadmoor Resp., Ex. 8. Broadmoor  
5 staff signed the letters, printed on Broadmoor stationery, and enclosed a registration form drafted  
6 by AHLA. Compl., Ex. 1; Broadmoor Resp., Ex. 8. The fundraiser cost \$50 per person.  
7 Compl., Ex. 1; Broadmoor Resp., Ex. 8. After arriving at the fundraiser, Club members were  
8 required to complete an AHLA membership form and become complimentary members of  
9 AHLA for three months. Broadmoor Resp. at 3 (citing Carter Decl. ¶ 10). The Broadmoor  
10 claims that it followed AHLA's instructions precisely. Broadmoor Resp. at 1, 3.

11                   2.     2011 Fundraiser

12             In 2011, the Broadmoor and AHLA again wished to invite Golf Club members to the  
13 annual fundraiser. Broadmoor Resp. at 3 (citing Johnson Decl. ¶ 15). To comply with  
14 Commission regulations, AHLA reasoned that the Broadmoor could invite Golf Club members  
15 to the event if the invitees joined AHLA — thus making them members of AHLA's restricted  
16 class. Broadmoor Resp. at 3. AHLA provided the Broadmoor with a notice to distribute to Club  
17 members, inviting them to join AHLA for one year for a discounted fee. Compl., Ex. 6.

18             The Broadmoor emailed the notice to Golf Club members on August 3, 2011. Compl.,  
19 Ex. 6. The same day, the Broadmoor separately sent Golf Club members an invitation for the  
20 August 8, 2011, fundraiser. Compl., Ex. 4; Broadmoor Resp., Ex. 10. This invitation was  
21 similar to the one sent in 2010, but in 2011 attendance at the reception and dinner would be free.  
22 *Id.* In a separate email, also sent August 3, 2011, the Broadmoor made express that Club  
23 Members must become AHLA members, for an annual fee of \$25, to attend the event: "The

reception and dinner are complimentary, but attendees must be members of the [AHLA] (this will explain the previous email regarding [AHLA]).” Compl., Ex. 7.

3. 2012 Fundraiser

On July 28, 2012, the Broadmoor again invited Golf Club members to the annual HotelPAC fundraiser. Compl., Ex. 10. After notice and receipt of the Complaint, however, the Broadmoor and AHLA withdrew the invitation to Golf Club members. Broadmoor Resp. at 4, Ex. 11.

III. LEGAL ANALYSIS

A. Solicitations Outside the Restricted Class

The Act permits corporations to establish political committees known as separate segregated funds or “SSFs.” See 2 U.S.C. §§ 441b(b)(2)(C); 431(4)(B). The Act, however, prohibits a corporation or its SSF from soliciting contributions to the SSF from persons outside the corporation’s restricted class — namely, the corporation’s executive and administrative personnel and families of such personnel. *Id.* § 441b(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1). Subject to certain conditions, a membership organization may solicit its corporate and non-corporate members directly. 2 U.S.C. § 441b(b)(4)(D); 11 C.F.R. §§ 114.7(c), 114.8(c)(i). A trade association and its SSF may solicit the stockholders and the executive and administrative personnel of a member corporation, provided that the member corporation separately and specifically approves the solicitation, and the member corporation does not approve a solicitation by any other trade association during the calendar year.<sup>2</sup> 2 U.S.C. § 441b(b)(4)(D); 11 C.F.R. § 114.8(c), (d). Commission regulations also contemplate that the member corporation may

<sup>2</sup> See 11 C.F.R. § 114.1(e)(1) (defining membership organization); 11 C.F.R. § 114.1(e)(2) (defining member of a membership organization); 11 C.F.R. § 114.8 (defining trade association); see also Advisory Op. 2012-15 (Am. Physical Therapy Assoc.) at 7, n.9 (explaining that a trade association that is also a membership organization may solicit non-corporate members).

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1 solicit contributions to the trade association's SSF. *See* 11 C.F.R. § 114.8(d)(1). Finally,  
2 Commission regulations provide that an "[a]ccidental or inadvertent solicitation" of persons  
3 outside a restricted class "will not be deemed a violation," if a corporation or SSF "used best  
4 efforts to comply with the limitations regarding the persons it may solicit and that the method of  
5 solicitation is corrected forthwith after the discovery of such erroneous solicitation." 11 C.F.R.  
6 § 114.5(h).

7 Here, because the Broadmoor is a member of the AHLA, the Act and Commission  
8 regulations permitted AHLA, HotelPAC, and the Broadmoor to solicit the Broadmoor's  
9 executive and administrative personnel. But because the Broadmoor is a corporation with capital  
10 stock — and thus not a membership organization under 11 C.F.R. § 114.7 — individuals who  
11 paid dues to the Golf Club were not within the Broadmoor's restricted class. *See* Broadmoor  
12 Supp. Resp. at 1.<sup>3</sup>

13 Upon receipt of the Complaint, AHLA, HotelPAC, and the Broadmoor agreed to  
14 withdraw the Golf Club members' invitations to the 2012 fundraiser. There is also no indication  
15 that contributions were made as a result of that withdrawn solicitation.

16 The Broadmoor has provided substantial evidence that it relied on AHLA and HotelPAC  
17 for guidance in complying with the Act and Commission regulations. *See* Broadmoor Resp.,  
18 Exs. 1-10. Under these circumstances, dismissal as to the Broadmoor is a justified exercise of  
19 prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the  
20 Commission dismisses with caution the allegation that the Broadmoor violated 2 U.S.C.  
21 § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).

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<sup>3</sup> There is no indication — and the Broadmoor does not assert — that any of the Golf Club members were also executive and administrative personnel of the hotel, or their families.

**B. Failure to Include Notices Regarding Voluntary Contributions in Solicitations**

To ensure that contributions solicited for an SSF are voluntary, the Act and Commission regulations require that “any person” who solicits contributions to an SSF inform the employee or member of the political purpose of such fund and of his or her right to refuse to contribute without reprisal. *See* 2 U.S.C. § 441b(b)(3)(B), (C); 11 C.F.R. §§ 114.1(i), 114.5(a)(3)-(5); *see also* Advisory Op. 2006-17 (Berkeley) at 5. The Commission has applied this requirement to membership organizations, including trade associations. *See, e.g.*, MUR 5681 (High Point Reg’l Ass’n of Realtors) (membership organization failed to include required notices in solicitations); Advisory Op. 1985-12 (Am. Health Care Ass’n PAC) (solicitation of trade association’s members must meet requirements of 11 C.F.R. § 114.5(a)).

Because the same reasons for dismissing the allegation concerning solicitations outside the restricted class apply here, the Commission dismisses with caution the allegation that the Broadmoor violated 2 U.S.C. § 441b(b)(3)(B), (C) and 11 C.F.R. § 114.5(a).